

Appl. No.: 10/074,026  
Amdt. dated September 10, 2007  
Reply to Final Office Action of July 9, 2007

### **REMARKS/ARGUMENTS**

Reconsideration and allowance of the subject application is respectfully requested in light of the following remarks and argument. Such action is deemed to be appropriate and necessary under the provisions of 37 CFR 1.116, in view of a clear error by the Examiner in analyzing the cited U.S. patent to Castle, No. 5,848,830 ("Castle"); U.S. patent to Giraud, No. 5,966,696 ("Giraud"); and U.S. patent to Nagatomo et al, No. 6,717,522 ("Nagatomo").

In the latest Official Action, Claims 36-45, 47, 52, 54-58, 62-64, and 75-80 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Castle in view of Giraud. Claims 46, 49-51, and 53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Castle in view of Giraud and further in view of Nagatomo. Claims 65-70 and 72-74 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Castle in view of Nagatomo. Finally, Claim 76 is objected to because of an informality.

#### **REJECTIONS UNDER 35 U.S.C. § 103(A)**

The Office Action rejects Claims 36-45, 47, 52, 54-58, 62-64, and 75-80 under 35 U.S.C. § 103(a) as being unpatentable over Castle in view of Giraud. Applicant submits that there is a lack of motivation to modify Castle, such as by substituting its display system with that of Giraud's. Castle discloses a display that can withstand being stepped on. Giraud fails to disclose that its display is configured for being stepped on. Also, Castle discloses that the display device and the components therein are configured to be rolled for storage or transport. The display in Giraud is housed behind a protective shield 14 and a housing 16 made out of stainless steel or the like. Consequently, the display in Giraud is not configured to be rolled for storage or transport.

The Giraud patent relates to a system that displays advertising information and measures the number of consumers watching the display. The Castle patent merely teaches that static poster substrates are inserted into a pocket of a floor mat (col.2, ll.60-61). The Giraud patent does not disclose how to reposition or reconfigure the electronic display on a floor and in

a plane substantially horizontal to the floor. Indeed, the Giraud patent does not disclose a way of protecting motion detectors and other similar parts from impact forces, not to mention the general wear and tear that comes with occupying an area of a floor. Neither the Castle patent nor the Giraud patent teaches how to protect the system in Giraud from being walked over or stood upon if positioned on a plane substantially parallel with the floor and configured on the floor. In addition, the functioning of the motion detector and optical scan/camera of the Giraud patent teach having the system in Giraud positioned vertically or perpendicular to the floor in order to recognize facial features of consumers. (See col.5, ll. 58-59). Therefore, Applicant submits that, for these reasons and others, there is a lack of motivation to modify Castle with Giraud's display system. Thus, the Castle patent would not motivate one of ordinary skill in the art to modify the Giraud patent to create a modifiable electronic display in a plane substantially horizontal to a floor and configured to occupy an area of the floor.

Applicant respectfully submits that the combination of the above noted references does not achieve the claimed invention and any interpretation finding otherwise is improper as "hindsight" used for determining obviousness. The Supreme Court has frequently warned against the use of hindsight in determining obviousness. See, e.g., *Diamond Rubber Co. v. Consolidated Rubber Tire Co.*, 220 U.S. 428 (1911).

Applicant submits that one of ordinary skill in the art would not have realized that the teaching of the Castle patent motivates configuring the display in the Giraud patent so that it occupies the ground and *in a plane substantially horizontal to the ground*. Accordingly, Applicant submits that the amendments to the claims in view of these arguments overcome the § 103(a) rejections.

#### OBJECTION TO CLAIM 76

Claim 76 has been amended as requested by the Examiner. Thus, Claim 76 no longer contains the informality as indicated by the Examiner.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper.

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However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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